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OFFICE OF THE SECRETARY

September 18, 1992

ORIGINAL
FILE

Ms. Cheryl Tritt
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

RE: **Enforcement of a "0+ in the Public Domain" Policy,**
CC Docket No. 92-77
Ex Parte

Dear Ms. Tritt:

The signatories to this letter all are organizations involved in the provision of operator assisted long distance calling. Many of us have participated actively in the Commission's deliberations on the proper treatment of proprietary 0+ CIID calling cards now pending in CC Docket No. 92-77. Together we provided (or represent companies which provide) a substantial portion of the operator services provided by firms other than AT&T today. All of us will be significantly affected by the actions taken in CC Docket No. 92-77, and advocate adoption of an FCC policy of "0+ in the public domain," (i.e., 0+ calling cards should be issued only if they can be validated and billed by any presubscribed IXC).

Recent discussions and ex parte filings concerning CIID card issues have raised questions about the practicality of enforcing a "0+ in the public domain" policy. This letter addresses the potential problems and suggests that such an FCC policy should be accompanied by a requirement that AT&T share its validation database and billing information for future 0+ dialed CIID calls. This approach would create proper incentives for AT&T to ensure that its CIID cardholders migrate to 10288 dialing. It also would end the current blocking of call completion for many CIID cardholders who choose to dial 0+.

If the Commission believes it necessary, this policy could be accompanied by a requirement that any calls billed to AT&T's CIID card be charged to end users at no more than AT&T's standard tariffed rates.

Ms. Cheryl Tritt
September 18, 1992
Page 2

This rule would ensure that AT&T CIID cardholders who place 0+ calls over competitive IXC networks under the new open validation and billing policy will not incur unexpected charges.

Enforcement Problems

Each of the signatories hereto continues to urge the Commission to adopt a policy of "0+ in the public domain." However, assuming the Commission adopts such a policy, questions have been raised regarding whether it could be effectively enforced. One suggestion has been that the Commission simply instruct IXCs which have issued 0+ cards to inform their cardholders that they should dial a carrier access code in the future.

In our view, however, merely asking AT&T's CIID cardholders to dial 10288 when using the card is likely to be highly ineffective. Cardholders would still be able to use their AT&T CIID cards on a 0+ basis for intraLATA calls from all locations and for interLATA calls from about 75 percent of public telephones (all those presubscribed to AT&T). The continued widespread availability of 0+ calling, combined with long-standing dialing pattern habits, seem certain to defeat any consumer education campaign. Consumers likely would continue to place CIID card calls from AT&T and non-AT&T telephones alike on a 0+ basis. The consumer frustration and anticompetitive impact which the Commission is seeking to eliminate would continue almost unabated.

The long term solution is for AT&T to develop the technical ability to differentiate incoming 0+ dialed calls from 10XXX calls. Callers erroneously dialing 0+ would receive a recorded voice announcement directing them to dial 10288. This approach would remedy the problem quickly and is technically feasible. However, the comments in CC Docket 92-77 indicate that such a screening capability is not now in place. Moreover, under present circumstances, AT&T has no incentive to develop and install such a capability. Indeed, if the consumer education campaign for 10288 dialing fails, AT&T could actually benefit by retaining the only proprietary 0+ card.

To provide the proper incentive and ensure a successful "0+ in the public domain" policy, the Commission should require AT&T to permit all carriers to validate and bill for CIID card calls which are dialed on a 0+ basis. This would enable AT&T to maintain a fully proprietary card for all 10288 dialed calls while ending the turmoil caused by the current 0+ proprietary CIID card. AT&T would be properly motivated to ensure that CIID cardholders who wish to use AT&T services are fully

Ms. Cheryl Tritt
September 18, 1992
Page 3

informed of the need to dial 10288. In addition, AT&T would be incented to develop expeditiously the technology needed to separate 0+ from 10288 dialed calls in order to ensure the success of its educational efforts. During the interim transition period, however, consumers dialing 0+ with a CIID card would be able to complete their calls using any presubscribed carrier.

AT&T has objected to this proposal strenuously, arguing that its CIID cardholders could be charged rates by presubscribed carriers which significantly exceed the AT&T rate which they may expect. While the signatories hereto strongly disagree with this concern -- indeed, many 0+ calls handled by presubscribed carriers today are billed at rates lower than AT&T's -- we believe that it could be remedied simply by requiring that all IXC's billing to AT&T CIID cards must do so at rates no higher than AT&T's standard rates. This is a difficult and costly concession by the undersigned parties, given that AT&T continues to maintain and exercise significant cost structure advantages over competitive carriers in operator assisted services. Nevertheless, if necessary to obtain an effective policy of "0+ in the public domain", we would accept such a requirement in order to sustain competition in these services and to foster the public interest and convenience. Given AT&T's ability to control the cost of validation and billing, the Commission may also wish to consider prohibiting all IXC's from paying commissions to aggregators on 0+ dialed calls charged to proprietary IXC cards. This would serve to level the competitive playing field during the interim period.

This plan solves any remaining consumer and competitive problems associated with "0+ in the public domain" while encouraging AT&T to work toward enforcement of the Commission's policies. Thus, if the Commission deems it necessary, the companies listed below each would support the adoption of rules which would condition their ability to accept 0+ calls charged to previously proprietary card numbers upon their agreement to charge rates at or below the card-issuer's standard tariffed rates.

It is important to note that this action is well within the Commission's legal authority. As a dominant carrier in the provision of operator assisted services, AT&T is subject to the full scope of the Commission's regulatory jurisdiction under Title II of the Act, as well as the agency's ancillary powers derived from Title I. For example, in the case of LEC validation services, the Commission recently exercised

Ms. Cheryl Tritt
September 18, 1992
Page 4

its Title II authority.¹ The proposals in this letter, however, do not require the Commission to exercise Title II oversight. It will be enough to reach a simple finding under Title I that, in order to preserve and protect the FCC's policy to foster the public interest through competition in interstate long distance telecommunications services, dominant IXC's that choose to issue 0+ calling cards must permit validation and billing for 0+ dialed calls by all interexchange carriers. For all the reasons stated in the comments in this proceeding, this ruling is clearly required to protect both consumers and viable competition. The additional implementation guidelines discussed below, including administration of an AT&T rate cap provision, would logically flow from this finding.

Implementation Issues

Implementation of such an enforcement plan should be undertaken and completed expeditiously. There are no legal or technical obstacles to a prompt opening of AT&T's validation and billing database if the Commission so directs. The Commission should require that universal validation and billing of calls charged to 0+ cards begin within 90 days.

Validation is relatively simple and could be provided to IXC's in the same manner that it is now given to the LEC's and GTE Airfone. AT&T charges for validation need not be regulated, but should be reasonable and non-discriminatory. As a measure of reasonableness, the validation fees contained in the AT&T-LEC Mutual Honoring Agreements (MHAs) could serve as a benchmark. LEC validation charges (currently about 3¢ per query) also could provide a general measure for comparative purposes. Non-discrimination should simply mean all carriers pay the same price per query.

Billing is slightly more complicated, but all issues can be resolved quickly, again using the MHAs as a benchmark. For example, AT&T could choose to bill the calls itself, as it does now for CIID card calls carried by LEC's and GTE Airfone, or it could permit LEC billing by providing the translation of the CIID number into a billing telephone number. In either case, AT&T should be permitted to charge a reasonable fee for its services. A weighted average of AT&T's fees under the MHAs

¹Report and Order and Request for Supplemental Comment,
CC Docket No. 91-115, FCC 92-168 (released May 8, 1992)
at para.18.

Ms. Cheryl Tritt
September 18, 1992
Page 5

could give a measure of fairness to such charges.

The "discount rate" at which AT&T (or the LECs if they do the billing) purchase receivables could be limited to AT&T standard tariff rates. This would ensure that consumers are charged AT&T rates or lower when using the CIID card, even if the call is carried by another IXC. Although the undersigned organizations have serious misgivings about this sort of "rate cap" policy, it appears to provide an acceptable compromise to resolution of a complicated and very serious problem -- one created by AT&T by virtue of its now well-documented misleading marketing practices with respect to its CIID card, and one for which competitive OSPs have to date borne the burden of unprocessable calls, unrecoverable costs and lost revenues.

Rather than becoming bogged down in technical discussions of implementation of this plan, the Commission should simply schedule industry meetings where AT&T and the competing IXCs would agree to the details of the arrangement. The FCC need not regulate these agreements, but rather need only officiate during any impasse in the discussions and act to ensure that the 90-day schedule is met. With this compromise from all sides, we believe the public interest can be protected.

Sincerely,

s/James M. Smith

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President
Competitive Telecommunications
Association

s/ Amy Gross

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Vice President and
General Counsel
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s/Kathryn Haycock

Kathryn Haycock
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Ms. Cheryl Tritt
September 18, 1992
Page 6

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s/Ulysses Auger II

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Ms. Cheryl Tritt
September 18, 1992
Page 7

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